

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – CENTRAL VALLEY REGIONAL WATER BOARD  
JANUARY 20, 2015**

**ITEM 3**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION REGARDING REVISION TO THE SOURCES OF DRINKING WATER POLICY TO ESTABLISH A SITE-SPECIFIC EXCEPTION FOR THE MUNICIPAL AND DOMESTIC BENEFICIAL USE OF GROUNDWATER BENEATH PORTIONS OF THE ROYAL MOUNTAIN KING MINE SITE, CALAVERAS COUNTY

**DISCUSSION**

The State Water Resources Control Board (“State Water Board”) adopted [Resolution No. 88-63](#) to establish the Sources of Drinking Water Policy (the “Policy”) for statewide water quality control. The Policy established the primary principle that all surface and ground waters within the State are considered suitable, or potentially suitable, for the municipal and domestic supply (“MUN”) beneficial use, but contains numerous general exceptions for surface water and groundwater. Several of the exceptions pertaining to groundwater include: where there is contamination (unrelated to the pollution incident) that cannot reasonably be treated for domestic use; total dissolved solids (“TDS”) exceed 3,000 milligrams per liter and not reasonably expected to supply a public water system; and insufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day. The Regional Water Quality Control Boards (“Regional Boards”) are required to conform their water quality control plans to the Policy. The Policy acknowledges the Regional Boards have discretion to separately evaluate whether bodies of water are presently or potentially suitable for MUN designation.

On March 28, 2014, the Central Valley Regional Water Quality Control Board (“Central Valley Water Board”) adopted an amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (the “Amendment”), which the State Water Board shall consider approving. The Amendment de-designated portions of the groundwater beneath the Royal Mountain King Mine (“RMKM”) site in Calaveras County (the “Site”) because such groundwater is not presently or potentially suitable for MUN. With regard to certain areas of groundwater de-designated by the Amendment, none of the Policy’s general exceptions apply.

The State Water Board will consider a proposed revision to the Policy to establish a site-specific exception for groundwater beneath portions of the RMKM Site (Policy revision), insofar as the State Water Board approves the Amendment, which finds the groundwater at the Site is not presently or potentially suitable for MUN.

**Background**

The Amendment includes, *inter alia*, provisions that de-designate the MUN beneficial use for groundwater beneath portions of the RMKM Site. The Central Valley Water Board’s action allows for the expeditious closure of the RMKM Site. While some of the groundwater in areas that the Central Valley Water Board de-designated meets the Policy’s exception criterion of TDS at 3,000 mg/L (mostly due to naturally-occurring salt concentrations), the Central Valley Water

Board has also de-designated some areas where groundwater does not meet the Policy's exception criteria. The proposed Policy revision will rectify this inconsistency.

RMKM was mined for gold from 1989 to 1994 and was regulated by Waste Discharge Requirements ("WDRs") issued by the Central Valley Water Board. Under these WDRs, large waste management units were built at the RMKM Site to contain the waste generated during gold mining operations. The Central Valley Water Board did not require that these waste management units be constructed with covers or liners, since, at the time, the mining waste was not considered a significant threat to water quality (the primary constituents of concern were sulfate and TDS). In 2001, the Central Valley Water Board reconsidered the applicable regulatory requirements, and found that the waste management units at the RMKM Site could, in fact, threaten the underlying groundwater. As a result, the Central Valley Water Board issued WDRs and a Cease and Desist Order that required the owner of the RMKM Site (Meridian Beartrack Company or "Meridian") to comply with significantly more stringent mine closure requirements. These orders mandated the installation of covers for the waste management units. Meridian petitioned the State Water Board to review these orders, arguing, in part, that the additional protections were unwarranted because the underlying groundwater was of poor quality due to the naturally-occurring geological conditions of the surrounding area.

In 2004, the State Water Board issued [WQO 2004-0007](#) (the "Remand Order"), which vacated and remanded the WDRs and the CDO to the Central Valley Water Board. In the Remand Order, the State Water Board found that the installation of a clay cover for the waste management units would have little benefit to downstream water quality and that the Central Valley Water Board's rationale for installing a cover without a liner was inconsistent with Title 27 closure requirements. The State Water Board also found that the extraordinarily high cost of retrofitting of the waste management units to install both a cover and a liner would be wholly unjustified, given that the water at the RMKM Site was of generally poor quality due to natural conditions. The State Water Board therefore concluded that it would be appropriate for the Central Valley Water Board to consider alternative approaches to mine closure.

On March 28, 2014, the Central Valley Water Board approved [Resolution R5-2014-0047](#) and adopted the Amendment, which outlines a strategy for closing the RMKM Site. As a part of this strategy, the Central Valley Water Board de-designated the MUN and AGR beneficial uses at portions of the RMKM Site. Only the de-designation of the MUN beneficial use implicates an inconsistency with the Policy for which the State Water Board shall consider the proposed revision thereto.

### **Rationale for De-Designation**

The Central Valley Water Board's Staff Report for the Amendment describes actual and potential MUN uses of groundwater within the RMKM Site, and concludes that groundwater beneath and immediately down gradient of several waste management units is not being, nor is it likely to be, utilized for MUN purposes. This finding was instrumental in the Central Valley Water Board's decision to de-designate this groundwater and to move forward with the proposed mine closure strategy.

The Central Valley Water Board de-designated the MUN beneficial use of groundwater beneath and immediately down gradient of the unlined waste management units although not all of the de-designated groundwater meets the Policy's 3,000 mg/L TDS exception criterion, based on a policy determination reflecting a pragmatic policy approach towards the closure of the RMKM Site. Despite that inconsistency, the Central Valley Water Board concluded that the de-

designations were appropriate because MUN is not an existing use of groundwater at the de-designation areas of the Site, nor can MUN be feasibly attained in the future. The State Water Board has been asked by the Central Valley Water Board to amend the Policy to rectify the inconsistency that the Central Valley Water Board's action has created.

### **POLICY ISSUE**

Adoption of the Policy revision is appropriate because the groundwater subject to the site-specific exception is not a "source of drinking water" and will allow the Central Valley Water Board to regulate the closure of the RMKM Site.

### **FISCAL IMPACT**

Central Valley Water Board and State Water Board staff work associated with this action will be addressed with existing and future budgeting resources.

### **REGIONAL WATER BOARD IMPACT**

Yes, Central Valley Water Board.

### **STAFF RECOMMENDATION**

That the State Water Board:

1. Adopts the Policy revision.
2. Authorizes the Executive Director to submit the Policy revision and the administrative record for this action to the Office of Administrative Law (OAL) for approval.
3. Directs the Executive Director or his designee to make minor, non-substantive modifications to the text of the Policy revision, if OAL determines during its review that such changes are needed; and directs the Executive Director to inform the State Water Board of any such changes.

State Water Board action on this item will assist the Water Boards in reaching Goals 4 and 6 of the Strategic Plan Update: 2008-2012. In particular, approval of this item will assist in fulfilling Objective 4.3 to achieve near-term priority Basin Plan amendment needs by collaborating in third party initiated processes that incorporate Water Board requirements and stakeholder interests and Objective 6.1 to target consistency improvements in process and policy for Water Board enforcement activities to promote compliance.

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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2015-

### REVISION TO THE SOURCES OF DRINKING WATER POLICY TO ESTABLISH A SITE-SPECIFIC EXCEPTION FOR THE ROYAL MOUNTAIN KING MINE SITE, CALAVERAS COUNTY

#### WHEREAS:

1. In 1988, the State Water Resources Control Board (State Water Board) adopted, by [Resolution No. 88-63](#), the Sources of Drinking Water Policy (the "Policy") for statewide water quality control.
2. The Policy established the principle that all surface and ground waters within the State are considered suitable or potentially suitable for the municipal and domestic supply ("MUN") beneficial use with certain exceptions. Exceptions applicable to groundwater include: where there is contamination (unrelated to the pollution incident) that cannot reasonably be treated for domestic use; where groundwater contains total dissolved solids ("TDS") exceeding 3,000 milligrams per liter and is not reasonably expected to supply a public water system; and where there is insufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day. The Policy acknowledges the Regional Boards have discretion to separately evaluate whether bodies of water are presently or potentially suitable for MUN designation.
3. The Central Valley Regional Water Quality Control Board (Central Valley Water Board) adopted an amendment to the Water Quality Control Plan for the Sacramento and San Joaquin River Basins (the "Amendment") on March 28, 2014. The Amendment includes, *inter alia*, provisions that de-designate the MUN beneficial use for groundwater beneath portions of the Royal Mountain King Mine (RMKM) Site in Calaveras County.
4. The Central Valley Water Board's Staff Report for the Amendment describes actual and potential MUN uses of groundwater within the RMKM Site, and concludes that groundwater beneath and immediately downgradient of several waste management units is not being, nor is it likely to be, utilized for MUN purposes.
5. While some of the groundwater in areas at the Site de-designated by the Central Valley Water Board meets the Policy's exception criterion of TDS in excess of 3,000 mg/L (mostly due to naturally-occurring salt concentrations), some areas were de-designated where groundwater does not meet that criterion. Despite that inconsistency, the Central Valley Water Board concluded such action was appropriate because such groundwater is not presently or potentially suitable for MUN.
6. A site-specific exception to the Policy for portions of groundwater at the RMKM Site is appropriate because MUN is not an existing use of groundwater at the de-designation areas of the RMKM Site, nor can that use potentially be attained in the future (Policy revision, attached hereto, with deletions from the existing policy shown in ~~strikeout~~ and additions to the existing policy shown in *underline-italics*). The Central Valley Water Board contacted all agencies that it had reason to believe might be concerned with the Amendment. Although the Central Valley Water Board did not receive written recommendations from any concerned agencies, the Calaveras County Environmental

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Management Agency and the Calaveras County Water District both provided verbal input. These agencies informed the Central Valley Water Board that it was their opinion that the quality and quantity of groundwater beneath and in the vicinity of the RMKM Site was highly variable, and that wells could not be considered a dependable source of municipal supply because many were either initially saline or became saline after some period of use, and that other wells went dry after limited use. Although no concerned agencies provided formal recommendations, the Amendment and the Policy revision are fully consistent with the perspectives expressed by all the concerned agencies that the Central Valley Water Board contacted, thus satisfying the requirements of Water Code section 13144.

7. In accordance with Water Code section 13147, the State Water Board provided requisite notice to the Central Valley Water Board of the public hearing for the proposed adoption of the Policy modification and provided notice by publication in the region for the Central Valley Water Board pursuant to Government Code section 6061.
8. The State Water Board's regulations for implementing the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA) require the State Water Board to conduct environmental review of its certified exempt regulatory programs, which includes state policies affecting water quality control and revisions thereto. (Cal. Code Regs., tit. 23, §§ 3775, 3777.) Environmental review of the revision to the Policy is evaluated in the Final Staff Report for the Amendment, including the environmental analysis (referred to herein as the State Water Board's "[Draft Substitute Environmental Documentation](#)," or "Draft SED") developed by the Central Valley Water Board, which described the whole of the proposed action as the Amendment including the need for the proposed modification to the Policy.
9. The Draft SED analyzed the potentially significant adverse environmental impacts that would result from the proposed action, included a brief description of the proposed project, a completed Environmental Checklist, an identification of potentially significant adverse environmental impacts, an analysis of reasonable alternatives to the project and mitigation measures to avoid or reduce any significant or potentially significant adverse environmental impacts, and an environmental analysis of the reasonably foreseeable method of compliance, the implementation of an existing groundwater management strategy. (Cal. Code Regs., tit 23, § 3777.) No significant environmental impacts were identified in the environmental analysis.
10. The State Water Board posted on its website the Notice of Filing of the Draft SED (dated September 2014), circulated notice of the availability of the Draft SED for the requisite 45-day interested person and public agency comment period, and responded in writing to written comments. (Cal. Code Regs., tit. 23, § 3779, subs.(a)-(d).)
11. The Final SED for the Policy Revision includes the Draft SED, any revisions to the Draft SED, responses to comments on the Draft SED and Policy revision, this resolution, and the Central Valley Regional Board's resolution adopting the Amendment. These documents constitute the required environmental documentation for compliance with the State Water Boards certified regulations for CEQA compliance. (Cal. Code Regs., tit. 23, § 3777.)

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12. The Central Valley Water Board circulated an earlier version of the Amendment for peer review in accordance with Health and Safety Code section 57004, subdivision (d). That prior version delineated the boundaries of a de-designation area based solely on whether or not the groundwater met the Policy's 3,000 mg/L TDS exception criterion, plus a "buffer zone" that was based on an extrapolation of geologic conditions at the RMKM Site. Though the peer reviewer concurred with parts of the Central Valley Water Board's delineation of the areas that did meet the 3,000 mg/L TDS exception criterion, the peer reviewer did not believe that the Policy allowed the Central Valley Water Board to create a buffer zone that would include pockets of groundwater that were of better quality than the 3,000 mg/L TDS exception criterion. The peer reviewer's comments caused the Central Valley Water Board to circumscribe a smaller de-designation area. With the final Amendment, however, the Central Valley Water Board justified the de-designation of limited areas that were necessary for the groundwater management strategy to work but that did not meet the Policy's 3,000 mg/L TDS exception criterion. In these limited areas, located immediately beneath and immediately downgradient of unlined waste management units and where the Central Valley Water Board had demonstrated that groundwater has never been, nor is not likely to be, used as a source of drinking water, the Central Valley Water Board declared that it was unreasonable, as a policy matter, to continue to protect the MUN beneficial use. The State Water Board concurs with the Central Valley Water Board's rationale that the site-specific de-designation is a policy decision that does not rely on scientific findings or assumptions and, thus is not subject to Health and Safety Code section 57004.

THEREFORE BE IT RESOLVED THAT THE STATE WATER BOARD:

1. Adopts the revision to the Policy as described in the Attachment to this Resolution.
2. Directs State Water Board staff to submit the Policy revision to the Office of Administrative Law (OAL) for approval.
3. Directs the Executive Director or his designee to make minor, non-substantive modifications to the text of the Policy revision, if OAL determines during its review that such changes are needed; and directs the Executive Director to inform the State Water Board of any such changes.
4. Following the effective date of the policy amendments, the Clerk is directed to prepare and certify a conformed copy of the revised policy with the changes incorporated.

## CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Board held on January 20, 2015.

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Jeanine Townsend  
Clerk to the Board

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## ATTACHMENT TO RESOLUTION NO. 2015-

### STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 88-63

(as revised by Resolution No. 2006-0008 and  
Resolution No. 2015-[xxxx] )

#### ADOPTION OF POLICY ENTITLED "SOURCES OF DRINKING WATER"

#### WHEREAS

1. California Water Code section 13140 provides that the State Board shall formulate and adopt State Policy for Water Quality Control; and,
2. California Water Code section 13240 provides that Water Quality Plans "shall conform" to any State Policy for Water Quality Control; and,
3. The Regional Boards can conform the Water Quality Control Plans to this policy by amending the plans to incorporate the policy; and,
4. The State Board must approve any conforming amendments pursuant to Water Code section 13245; and,
5. "Sources of drinking water" shall be defined in the Water Quality Control Plans as those water bodies with beneficial uses designated as suitable, or potentially suitable, for municipal or domestic water supply (MUN); and,
6. The Water Quality Control Plans do not provide sufficient detail in the description of water bodies designated MUN to judge clearly what is, or is not, a source of drinking water for various purposes.
7. On February 1, 2006, the State Board adopted Resolution No. 2006-0008, which amended this policy to establish a site-specific exception for Old Alamo Creek. The rationale for the site-specific exception is contained in the resolution and in State Board Order WQO 2002-0015, II.A.2.d.
8. On [date], the State Board adopted Resolution No. 2015-[xxxx], which amended this policy to establish a site-specific exception for groundwater in portions of the Royal Mountain King Mine site in Calaveras County. The rationale for the site-specific exception is contained in the staff report that supported Central Valley Water Board Resolution R5-2014-0047.

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THEREFORE BE IT RESOLVED:

All surface and ground waters of the State are considered to be suitable, or potentially suitable, for municipal or domestic water supply and should be so designated by the Regional Boards<sup>1</sup> with the exception<sup>2</sup> of:

1. Surface and ground waters where:

- a. The total dissolved solids (TDS) exceed 3,000 mg/L (5,000 uS/cm, electrical conductivity) and it is not reasonably expected by Regional Boards to supply a public water system, or
- b. There is contamination, either by natural processes or by human activity (unrelated to the specific pollution incident), that cannot reasonably be treated for domestic use using either Best Management Practices or best economically achievable treatment practices, or
- c. The water source does not provide sufficient water to supply a single well capable of producing an average, sustained yield of 200 gallons per day, or
- d. One of the following site-specific exemptions applies:
  - i. Old Alamo Creek
  - ii. Groundwater within the area of the Royal Mountain King Mine Site shown in Attachment 1 of the Central Valley Water Board Resolution R5-2014-0047.

2. Surface Waters Where:

- a. The water is in systems designed or modified to collect or treat municipal or industrial wastewaters, process waters, mining wastewaters, or storm water runoff, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards; or,
- b. The water is in systems designed or modified for the primary purpose of conveying or holding agricultural drainage waters, provided that the discharge from such systems is monitored to assure compliance with all relevant water quality objectives as required by the Regional Boards.

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<sup>1</sup> This policy does not affect any determination of what is a potential source of drinking water for the limited purposes of maintaining a surface impoundment after June 30, 1988, pursuant to Section 25208.4 of the Health and Safety Code.

<sup>2</sup> ~~This policy contains general categories for exceptions from the policy. On February 1, 2006, the State Board adopted Resolution No. 2006-0008, which established a site-specific exception from the policy for Old Alamo Creek. The rationale for the site-specific exception is contained in the resolution and in State Board Order WQO 2002-0015, II.A.2.d.~~



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3. Ground water where:

The aquifer is regulated as a geothermal energy producing source or has been exempted administratively pursuant to 40 Code of Federal Regulations, section 146.4 for the purpose of underground injection of fluids associated with the production of hydrocarbon or geothermal energy, provided that these fluids do not constitute a hazardous waste under 40 CFR, section 261.3.

4. Regional Board Authority to Amend Use Designations:

Any body of water which has a current specific designation previously assigned to it by a Regional Board in Water Quality Control Plans may retain that designation at the Regional Board's discretion. Where a body of water is not currently designated as MUN but, in the opinion of a Regional Board, is presently or potentially suitable for MUN, the Regional Board shall include MUN in the beneficial use designation.

The Regional Boards shall also assure that the beneficial uses of municipal and domestic supply are designated for protection wherever those uses are presently being attained, and assure that any changes in beneficial use designations for waters of the State are consistent with all applicable regulations adopted by the Environmental Protection Agency.

The Regional Boards shall review and revise the Water Quality Control Plans to incorporate this policy.

## CERTIFICATION

The undersigned, ~~Acting~~ Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a policy duly and regularly adopted at a meeting of the State Water Resources Control Board held on May 19, 1988, and amended on February 1, 2006 and on [date].

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~~Selica Potter~~ Jeanine Townsend  
Acting Clerk to the Board